

KRAMER LEVIN NAFTALIS & FRANKEL LLP

JOHN P. COFFEY  
PARTNER  
PHONE 212-715-9456  
FAX 212-715-8456  
SCOFFEY@KRAMERLEVIN.COM

April 6, 2017

Via Electronic Delivery

The Honorable Naomi Reice Buchwald  
United States District Judge

The Honorable Allison J. Nathan  
United States District Judge

United States District Court for the  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312

Re: *John Exley v. MGT Capital Investments, Inc., et al.*,  
No. 1:16-cv-07415-NRB;

*Kurt Karner v. MGT Capital Investments, Inc., et al.*, No. 1:16-cv-07423-NRB;

*Stephen Mayer v. MGT Capital Investments, Inc., et al.*, No. 1:16-cv-07449-NRB;

*ATG Capital LLC, et al. v. MGT Capital Investments Inc., et al.*, No. 1:17-cv-02440-AJN

Dear Judges Buchwald and Nathan:

We represent Defendants in the above-referenced cases. We write to bring to Your Honors' attention our view that the case recently filed and assigned to Judge Nathan ("*ATG Capital*") is related to three putative securities class actions filed in September 2016 and pending before Judge Buchwald (the "*Securities Cases*"). Accordingly, Defendants respectfully request that *ATG Capital* be reassigned to Judge Buchwald.

Pending before Judge Buchwald are the three *Securities Cases*: *John Exley v. MGT Capital Investments, Inc., et al.*, No. 1:16-cv-07415-NRB; *Kurt Karner v. MGT Capital*

1177 AVENUE OF THE AMERICAS NEW YORK NY 10036-2714 PHONE 212.715.9100 FAX 212.715.8000

990 MARSH ROAD MENLO PARK CA 94025-1949 PHONE 650.752.1700 FAX 650.752.1800

47 AVENUE HOCHÉ 75008 PARIS FRANCE PHONE (33-1) 44 09 46 00 FAX (33-1) 44 09 46 01

WWW.KRAMERLEVIN.COM

KRAMER LEVIN NAFTALIS & FRANKEL LLP

The Honorable Naomi Reice Buchwald  
The Honorable Allison J. Nathan  
April 6, 2017  
Page 2

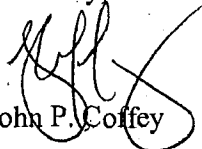
*Investments, Inc., et al.*, No. 1:16-cv-07423-NRB; and *Stephen Mayer v. MGT Capital Investments, Inc., et al.*, No. 1:16-cv-07449-NRB.<sup>1</sup> The principal factual allegations in these cases relate to the unsuccessful attempt by Defendant MGT Capital Investments, Inc. ("MGT") to acquire two cyber-related companies ("D-Vasive" and "Demonsaw") in 2016. *See, e.g., Exley* complaint [ECF No. 1], ¶¶ 2-5, 19-24, 30, 34. While the legal claims relate to alleged public misstatements concerning MGT's efforts to acquire D-Vasive and Demonsaw, many of the underlying factual issues revolve around MGT's efforts and where any responsibility may rest for the failure of those deals to close.

On April 4, 2017, the *ATG Capital* complaint was filed in this District. While it asserts different legal claims (to wit, tortious interference, breach of contract, and unjust enrichment), the principal factual allegations relate to the prospective D-Vasive and Demonsaw acquisitions and the failure of those deals to close. *See ATG Capital* complaint [ECF No. 1], *passim*.

Both *ATG Capital* and the earlier-filed *Securities Cases* thus relate to facts underlying MGT's contemplated D-Vasive and Demonsaw transactions. If these cases proceed beyond the pleading stage there will likely be substantially overlapping discovery, including the production of documents related to the proposed transactions and the depositions of virtually the same witnesses. We also anticipate that there may be common legal issues. Accordingly, Defendants believe that the actions are "related" within the meaning of Local Civil Rule 1.6(a).<sup>2</sup> We also respectfully submit that reference of the *ATG Capital* matter to Judge Buchwald would achieve the Court's objective to "avoid unnecessary duplication of judicial effort." *See* Local Civil Rule 1.6(a).

Undersigned counsel has already filed a Statement of Relatedness with the Court. Out of an abundance of caution, however, we write directly to Your Honors to elaborate on the issue of relatedness and the reasons why Defendants believe that the newly filed case should proceed before Judge Buchwald.

Sincerely,



John P. Coffey

<sup>1</sup> Those actions are awaiting possible consolidation and appointment of a lead plaintiff and lead counsel. *See Exley v. MGT Capital Investments, Inc., et al.*, [ECF No. 11].

<sup>2</sup> Plaintiffs in the *ATG Capital* suit did not mark the case as a related action. *See ATG Capital* [ECF No. 3] (Civil Cover Sheet).

KRAMER LEVIN NAFTALIS & FRANKEL LLP

The Honorable Naomi Reice Buchwald  
The Honorable Allison J. Nathan  
April 6, 2017  
Page 3

cc: (Via Electronic Delivery)

Counsel for *ATG Capital*:

Geoffrey L. Harrison ([gharrison@susmangodfrey.com](mailto:gharrison@susmangodfrey.com))  
Shawn J. Rabin ([srabin@susmangodfrey.com](mailto:srabin@susmangodfrey.com))  
Geng Chen ([gchen@susmangodfrey.com](mailto:gchen@susmangodfrey.com))

Counsel for Plaintiffs in the *Securities Cases*:

Gregory Mark Nespole ([gmh@whafh.com](mailto:gmh@whafh.com))  
Phillip C. Kim ([pkim@rosenlegal.com](mailto:pkim@rosenlegal.com))  
Jeremy Alan Lieberman ([jalieberman@pomlaw.com](mailto:jalieberman@pomlaw.com))  
Lesley Frank Portnoy ([LPortnoy@glancylaw.com](mailto:LPortnoy@glancylaw.com))  
Joseph Alexander Hood, II ([ahood@pomlaw.com](mailto:ahood@pomlaw.com))